

**SOAH DOCKET NO. 453-04-8914.M2
TWCC MR NO. M2-04-1618-01**

AMERICAN HOME ASSURANCE CO.,	‘	BEFORE THE STATE OFFICE
Petitioner	:	
	:	
V.	:	OF
	:	
JEFFERY WASSERMAN, M.D.,	:	
Respondent	‘	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

American Home Assurance Co. (Carrier) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers’ Compensation Commission (TWCC) regarding medical services for ___ (Claimant). The IRO agreed with Jeffery Wasserman, M.D. (Provider) and found that an intrathecal narcotic injection should be pre-authorized to treat the pain in the Claimant’s lower back that has resulted from his compensable injury.

The only disputed issue is whether the intrathecal narcotic injection is reasonably medically necessitated by the compensable injury. The Carrier has the burden of proof.

As set out below, the Administrative Law Judge (ALJ) finds that the intrathecal narcotic injection is medically necessary and pre-authorizes it.

II. FINDINGS OF FACT

1. On ___, the Claimant sustained a work-related injury to his lower back as a result of his work activities (Compensable Injury).
2. On the date of injury, the Claimant’s employer was ___, and the Carrier was its workers’ compensation insurance carrier.
3. As a result of the compensable injury, the Claimant suffers continuing lower back pain.

4. The Claimant has a large centrally herniated disc at lumbar vertebrae (L) 5 and sacral vertebrae (S) 1 and additional degeneration at L4-L5, which are the sources of his pain.
5. The Claimant ' s pain has not responded to conservative care.
6. Most patients who receive a two-level disc fusion have no less pain after five years than patients who do not receive a fusion.
7. The Claimant is not a candidate for a disc fusion to relieve his pain.
8. The Claimant has been taking Oxycontin and Hydrocodone orally since June 2002 for his pain, but it remains at a seven-out-of-ten level.
9. An intrathecal narcotic injection, though given at a much lower dosage, is 100 times more effective than an oral pain relief medication and can provide significant pain relief when an oral medication is ineffective.
10. Although not preauthorized, the Claimant received an intrathecal narcotic injection from the Provider, which gave the Claimant substantial pain relief for 36 hours.
11. The current dispute is over an additional intrathecal narcotic injection.
12. The Provider sought preauthorization from the Carrier for an intrathecal narcotic injection to treat the Claimant ' s lower back pain.
13. The Carrier sent an explanation of benefit to the Provider denying the requested preauthorization, claiming it was not shown to be reasonably medically necessary to treat the pain from the Compensable Injury.
14. The Provider filed a request for medical dispute resolution with the TWCC.
15. An IRO reviewed the medical dispute and found that the intrathecal narcotic injection was medically necessary and should be preauthorized.
16. After the IRO decision was issued, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
17. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier and the Provider.

18. On October 12, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
19. The Carrier appeared at the hearing through its attorney, Dan Kelly.
20. The Provider appeared at the hearing by telephone.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) ' ' 402.073(b) and 413.031(k) (West 2004) and TEX. GOV ' T CODE ANN. (Gov ' t Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov ' t Code ' ' 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code ' 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) ' 155.41(b) (2004), and 28 TAC ' ' 133.308(v) and 148.21(h) (2004), the Carrier has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code ' 408.021 (a).
5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code ' 413.014.
6. Pre-authorization is required for an intrathecal narcotic injection. 28 TAC ' 134.600.
7. Based on the above Findings of Fact and Conclusions of Law, the Claimant reasonable medically needs an intrathecal narcotic injection to treat his pain resulting from his compensable injury.

8. Based on the above Findings of Fact and Conclusions of Law, an intrathecal narcotic injection for the Claimant should be pre-authorized.

ORDER

IT IS ORDERED THAT an intrathecal narcotic injection for the Claimant is pre-authorized.

Signed October 28, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**